

May 15, 1990

Mr. Bruce L. Gillaspie
Director of Safety
Petroleum Helicopters, Inc.
Post Office Box 90808
Lafayette, LA 70509

Dear Mr. Gillaspie:

I am responding to your letter of April 4, 1990, to Bea Vandervalk requesting our assistance in compliance with separate DOT rules regarding access to records of drug tests conducted on your employees.

Your letter states that under 14 CFR Parts 121 and 135 the Federal Aviation Administration requires your company to conduct drug tests and record the results, and that two pipeline operators wish to reply on these tests and records to satisfy analogous drug testing requirements applicable to pipeline operators under 49 CFR Part 199. To do so, the pipeline operators, our agency, and possibly State pipeline safety agencies must have access to the test records as required by ? 199.21(b).

Before addressing the access issue, I believe it is necessary to mention the circumstances under which an employee of a pipeline contractor is subject to drug testing under 199. A contractor employee is subject to drug testing under Part 199 when that employee performs on a pipeline an operation, maintenance, or emergency-response function that is regulated by 49 CFR Part 192 or 195. (See the Part 199 definition of "employee.") Your letter does not indicate whether your company's employee perform any of these regulated functions; unless they do so, they are not subject to the Part 199 drug testing requirements. Merely providing air taxi service to enable personnel of a pipeline operator to perform a regulated function would not make an employee subject to drug testing under Part 199. However, if any of your employees perform a regulated operation, maintenance, or emergency-response function on a pipeline, such as conducting pipeline patrols under ? 192.705 or providing prompt response to a pipeline emergency under ? 192.615, they would be subject to drug testing under Part 199.

We understand that the rule on confidentiality under 49 CFR Part 121 does not permit your company to disclose an individual's drug test records to a third party, such as a individual. We do not, however, find this rule to be in conflict with ? 199.21(b) because ? 199.21(b) is stated in a permissive, not a mandatory, sense. Pipeline operators are not required to rely on a contractor's drug testing program to meet Part 199 requirements. Rather, ? 199.21(b) allows operators to do so provided the contractor grants access to

property and records that are relevant to monitoring compliance with Part 199. If a contractor is unwilling to grant such access, or as in your case a contractor's employee does not consent to the release of records of relevant drug tests, then the pipeline operator must use some other means to fulfill the Part 199 drug testing requirements or engage a different contractor. Once employees of your company who perform regulated operation, maintenance, or emergency-response functions on pipelines become aware of the Part 199 requirements, they may agree to allow access to their drug test records in accordance with ? 199.21(b).

I trust this response is helpful in your dealings with the pipeline operators.

Sincerely,

George W. Tenley, Jr.
Director
Office of Pipeline Safety